

Department of Energy

§ 1040.102

(2) Where appropriate, recommendations for achieving voluntary compliance; and

(3) The opportunity to request DOE to engage in voluntary compliance negotiations prior to the Director's final determination of compliance or noncompliance. The Director or the Director's designee shall notify the Assistant Attorney General at the same time the recipient is notified of any matter where recommendations for achieving voluntary compliance are made.

(e) If, within 45 days of the recipient's notification under paragraph (d) of this section, the Director's (FAPD) recommendations for compliance are not met, or voluntary compliance is not secured, or the preliminary findings are not shown to be false, the matter will be forwarded to the Director for a determination of compliance or noncompliance. The determination is to be made no later than 60 days after the recipient has been notified of the preliminary findings. If the Director makes a determination of noncompliance, the Department shall institute actions specified in subparts G and H.

(f) Where the Director makes a formal determination of noncompliance, the recipient and the Assistant Attorney General shall be immediately advised, in writing, of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Director shall institute proceedings under subpart H.

(g) All agreements to come into voluntary compliance shall be in writing and signed by the Director and an official who has authority to legally bind the recipient.

§ 1040.102 Compliance information.

(a) *Cooperation and assistance.* Each responsible Departmental official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep reports and submit to the responsible Department official or his/

her designee, timely, complete, and accurate compliance reports at the times, in such form, and containing information as the responsible Department official or the designee may determine to be necessary to enable him/her to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for DOE data on program participants, identified by race, color, national origin, sex, age and handicap status. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient or subcontracts with any other person or group, such other recipient shall also submit compliance reports to the primary recipient which will enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his/her designee during normal business hours to books, records, personnel records, accounts, other sources of information, and its facilities, which are pertinent to ascertain compliance with this part. The requirement for access to sources of information shall be contained in the certificate of assurance and agreed to by the recipient as a condition to award. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person fails or refuses to furnish that information, the recipient shall certify this in its report and set forth the efforts which it has made to obtain the information. The sub-recipient in such case shall be subject to proceedings described under subpart H of this part.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons information regarding the provisions of this section and its applicability to the program under which the recipient receives Federal financial assistance. Information is to be made available to beneficiaries, participants, and other interested persons in a manner which the responsible Department officials find necessary to inform such persons

of the protections against discrimination assured them by this part and the statutes to which this part applies.

§ 1040.103 [Reserved]

§ 1040.104 Complaint investigation.

(a) The Director, FAPD, shall investigate complaints of discrimination that allege a violation of—

(1) Title VI of the Civil Rights Act of 1964, Sec. 16 of the Federal Energy Administration Act of 1974, as amended, or Sec. 401 of the Energy Reorganization Act of 1974;

(2) Title IX of the Education Amendments of 1972, as amended;

(3) Section 504 of the Rehabilitation Act of 1973, as amended;

(4) Age Discrimination Act of 1975, as amended, (reserved in this part);

(5) Title VIII of the Civil Rights Act of 1968, as amended, (reserved in this part);

(6) This part; and

(7) Civil rights provisions of statutes administered pursuant to the DOE Organization Act, Pub. L. 95–91.

(b) No complaint will be investigated if it is received by an appropriate Departmental official more than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Director, FAPD, for good cause shown. Where a complaint is accepted for investigation, the Director, FAPD, will initiate a DOE investigation. The Director, FAPD, who is responsible for the investigation, shall notify the complainant, in writing, if the complaint has been accepted or rejected.

(c) The Director, FAPD, or his/her designee shall conduct investigations of complaints as follows:

(1) Within 35 days of receipt of a complaint, the Director, FAPD, shall:

(i) determine whether DOE has jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction is not found, wherever possible, refer the complaint to the Federal agency with such jurisdiction and advise the complainant;

(iii) If jurisdiction is found, notify the recipient alleged to be discriminating of receipt of the complaint; and

(iv) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint and, with the written consent of the complainant, the identity of the complainant. The identity of the complainant may be revealed by the Director, FAPD, OEO, without the complainant's written consent if the Director, FAPD, OEO, determines that such action is necessary for resolution of the complaint;

(ii) The program or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of DOE's findings, a documentary submission responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance made.

(3) Within 90 days of initiating the investigation, the Director, FAPD, shall advise the recipient, in writing of:

(i) Preliminary findings;

(ii) Where appropriate, recommendations for achieving voluntary compliance; and

(iii) The opportunity to request DOE to engage in voluntary compliance negotiations prior to the Director's final determination of compliance or noncompliance. The Director or the Director's designee shall notify the Assistant Attorney General and the recipient of any matter where recommendations for achieving voluntary compliance are made.

(4) If, within 45 days of the recipient's notification under paragraph (c)(3) of this section, the Director's (FAPD) recommendations for compliance are not met, or voluntary compliance is not secured, or the preliminary findings are not shown to be false, the matter will be forwarded to the Director, OEO, for a determination of compliance or noncompliance. The determination is to be made no later than 60 days after the recipient has been notified of the preliminary findings. If the Director makes a determination of noncompliance, the Department shall institute actions specified in subpart H.

(5) Where the Director makes a formal determination of noncompliance,